

## **BAY COUNTY RISK MANAGEMENT REQUIREMENTS FOR AGREEMENTS, CONTRACTS AND LEASES**

### **INTENT OF SUGGESTIONS**

These suggestions represent a risk management viewpoint of desirable policy and wording for only risk and insurance provisions in agreements, contracts, and leases, and are not intended to represent legal opinion which should be sought from legal counsel.

It may not be possible or practical to incorporate all of these provisions in every agreement, contract or lease, but these standards should generally be considered preferable to the limited provisions contained in many agreements contracts and leases. Obviously, the comparative negotiating strengths and leverage of the parties to each agreement, contract or lease and the legal and insurance climate will determine which specific terms are practical for individual agreements, contracts, and leases.

With regard to desired insurance, these suggestions include basic coverage requirements which should apply in most situations, and several additional insurance requirements, one or more of which should be chosen for individual agreements, contracts and leases, on an as-needed basis.

It may be desirable to develop one or more alternate sets of standards, containing varying degrees of fewer or lesser requirements, for circumstances in which compliance with these standards should not or cannot be expected.

The suggested policy and standards herein are designed to protect the County's interests, but several of the requirements also assure better protection of the Other Party's interests. For example, the breadth of insurance coverages required may respond to more of the Other Party's risks of loss than the Other Party's current insurance program.

Since there is such a broad range of possible services and products that can be negotiated by agreement or contract and leases can be varied, the policy and standards will require further modification for specific applications.

### **STATEMENT OF PURPOSE**

The County enters into agreements and contracts for services and/or products of other parties, and into leases of property to others. Agreements, contracts and leases shall contain risk management/insurance terms to protect the County's interests and to minimize its potential liabilities. The following terms and requirements shall be included.

### **COUNTY DEFINED**

The term County (wherever it may appear) is defined to mean the County itself, its Board of County Commissioners and Constitutional Officers, to the extent of their interests, officers, employees, volunteers, representatives and agents.

## **OTHER PARTY DEFINED**

The term Other Party (wherever it may appear) means the other person or entity which is a party to this agreement or contract, any subsidiaries or affiliates, officers, employees, volunteers, representatives, agents, contractors and subcontractors.

## **HOLD HARMLESS**

The County shall be held harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom, arising out of the agreement, contract or lease, unless such claims are a result of the County's sole negligence.

## **PAYMENT ON BEHALF OF COUNTY**

The Other Party agrees to pay on behalf of the County, and to pay the cost of the County's legal defense, for all claims described in the Hold Harmless paragraph.

Such payment on behalf of the County shall be in addition to any and all other legal remedies available to the County and shall not be considered to be the County's exclusive remedy.

## **CONSIDERATION FOR HOLD HARMLESS/PAYMENT ON BEHALF Applicable to Florida Construction Contracts**

The Other Party agrees to accept, and acknowledges as adequate remuneration, the consideration of \$ 10 for agreeing to the Hold Harmless, Payment on Behalf of County, Insurance and Certificates of Insurance provisions in this agreement or contract. (Florida Statute 725.06)

## **LOSS CONTROL/SAFETY**

Precaution shall be exercised at all times by the Other Party for the protection of all persons, including employees, and property. The Other Party shall be expected to comply with all laws, regulations or ordinances related to safety and health, shall make special effort to detect hazardous conditions and shall take prompt action where loss control/safety measures should reasonably be expected.

The County may order work to be stopped if conditions exist that present immediate danger to persons or property. The Other Party acknowledges that such stoppage will not shift responsibility for any damages from the Other Party to the County.

The Other Party acknowledges that possession, use, or threat of use of weapons or firearms is not permitted on County property, including in the Other Party's vehicles, unless such possession or use of a weapon is a necessary and an approved requirement of the contract.

## **DRUG FREE WORK PLACE REQUIREMENTS**

All contracts with individuals or organizations that wish to do business with the Bay County Board of Commissioners, a stipulation will be made in the contract or purchase order that requires contractors, subcontractors, vendors or consultants to have a substance abuse policy. The employees of such contractors, subcontractors, vendors or consultants will be subject to the same rules of conduct and tests as the employees of the Bay County Board of Commissioners. In the event of an employee of a supplier of goods or services is found to have violated the Substance Abuse Policy, that employee will be denied access to the County's premises and job sites. In addition, if the violation(s) is/are considered flagrant, or the County is not satisfied with the actions of the contractor, subcontractor, vendor, or consultant, the County can exercise its right to bar all of the contractor's, subcontractor's, vendor's, or consultant's employees from its premises or decline to do business with the contractor, subcontractor, vendor or consultant in the future. All expenses and penalties incurred by a contractor, subcontractor, vendor or consultant as a result of a violation of the County's Substance Abuse Policy shall be borne by the contractor, subcontractor, vendor, or consultant.

## **INSURANCE - BASIC COVERAGES REQUIRED**

The Other Party shall procure and maintain the following described insurance, except for coverages specifically waived by the County, on policies and with insurers acceptable to the County.

These insurance requirements shall not limit the liability of the Other Party. The County does not represent these types or amounts of insurance to be sufficient or adequate to protect the Other Party's interests or liabilities, but are merely minimums.

Except for workers' compensation and professional liability, **the Other Party's insurance policies shall be endorsed to name the County as an additional insured to the extent of the County's interests arising from this agreement, contract, or lease.**

Except for workers' compensation, the Other Party waives its right of recovery against the County, to the extent permitted by its insurance policies.

The Other Party's deductibles/self-insured retentions shall be disclosed to the County and may be disapproved by the County. They shall be reduced or eliminated at the option of the county. The Other Party is responsible for the amount of any deductible or self-insured retention.

Insurance required of the Other Party or any other insurance of the Other Party shall be considered primary, and insurance of the County shall be considered excess, as may be applicable to claims which arise out of the Hold Harmless, Payment on Behalf of the County, Insurance, Certificates of Insurance and any Additional Insurance provisions of this agreement, contract or lease.

## **WORKERS' COMPENSATION COVERAGE**

The Other Party shall purchase and maintain workers' compensation insurance for all workers' compensation obligations imposed by state law and employers liability limits of a least \$100,000 each accident and \$100,000 each employee/\$500,000 policy limit for disease.

The Other Party shall also purchase any other coverages required by law for the benefit of employees.

The Other Party shall provide to the County an Affidavit stating that he meets all the requirements of Florida Statute 440.02 (14) (d).

## **GENERAL, AUTOMOBILE AND EXCESS OR UMBRELLA LIABILITY COVERAGE**

The Other Party shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Commercial or Comprehensive General Liability and Business Auto policies of the Insurance Services Office.

Minimum limits of \$-,000,000 per occurrence for all liability must be provided, with excess or umbrella insurance making up the difference, if any, between the policy limits of underlying policies (including employers liability required in the Workers' Compensation Coverage section) and the amount of coverage required.

## **GENERAL LIABILITY COVERAGE**

### **Commercial General Liability - Occurrence Form Required**

Coverage A shall include bodily injury and property damage liability for premises, operations, products and completed operations, independent contractors, contractual liability covering this agreement contract or lease, and broad form property damage, and property damage resulting from explosion, collapse or underground (x,c,u) exposures.

Coverage B shall include personal injury.

Coverage C, medical payments, is not required.

## **PRODUCTS/COMPLETED OPERATIONS**

The Other Party is required to continue to purchase products and completed operations coverage, at least to satisfy this agreement, contract or lease, for a minimum of three years beyond the County's acceptance of renovation or construction projects.

## **BUSINESS AUTO LIABILITY COVERAGE**

Business Auto Liability coverage is to include bodily injury and property damage arising out of ownership, maintenance or use of any auto, including owned, non-owned and hired automobiles and employee non-ownership use.

## **EXCESS OR UMBRELLA LIABILITY COVERAGE**

Umbrella Liability insurance is preferred, but an Excess Liability equivalent may be allowed. Whichever type of coverage is provided, it shall not be more restrictive than the underlying insurance policy coverages.

## **CERTIFICATES OF INSURANCE**

**Certificate Holder will be addressed as the BAY COUNTY BOARD OF COMMISSIONERS, 812 W. 11<sup>th</sup> Street, Panama City, Florida 32401. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address.**

**Each Certificate will address the service being rendered to the County by the Other Party.**

Required insurance shall be documented in Certificates of Insurance which provide that the County shall be notified at least 30 days in advance of cancellation, nonrenewal or adverse change.

New Certificates of Insurance are to be provided to the County at least 15 days prior to coverage renewals.

If requested by the County, the Other Party shall furnish complete copies of insurance policies, forms and endorsements.

For the Commercial General Liability coverage the Other Party shall, at the option of the County, provide an indication of the amount of claims payments or reserves chargeable to the aggregate amount of the liability coverage.

Receipt of certificates or other documentation of insurance or policies or copies of policies by the County, or by any of its representatives, which indicate less coverage than required does not constitute a waiver of the Other Party's obligation to fulfill the insurance requirements herein.

## **ADDITIONAL INSURANCE**

If checked below, the County requires the following additional types of insurance.

\_\_\_ **Property Coverage for Leases**

The Other Party shall procure and maintain for the life of the lease, all risk/special perils (including sinkhole) property insurance (or its equivalent) to cover loss resulting from damage to or destruction of the building and personal property/contents. The policy shall cover 100% replacement cost, and shall include an agreed value endorsement to waive coinsurance.

\_\_\_ **Commercial General Liability Increased General Aggregate Limit (or separate aggregate)**

Because the Commercial General Liability form of coverage includes an annual aggregate limitation on the amount of insurance provided, a separate project aggregate limit of \$ \_\_\_\_\_ is required by the County for this agreement or contract.

\_\_\_ **Liquor Liability**

In anticipation of alcohol being served, the Other Party shall provide evidence of coverage for liquor liability in an amount equal to the general/umbrella/excess liability coverage. If the general liability insurance covers liquor liability (e.g. host or other coverage), the Other Party's agent or insurer should provide written documentation to confirm that coverage already applies to this agreement, contract or lease. If needed coverage is not included in the general/umbrella excess liability policy(ies), the policy(ies) must be endorsed to extend coverage for liquor liability, or a separate policy must be purchased to provide liquor liability coverage in the amount required.

\_\_\_ **Owners Protective Liability Coverage**

For renovation or construction contracts the Other Party shall provide for the County an owners protective liability insurance policy (preferably through the Other Party's insurer) in the name of the County.

This is redundant coverage if the County is named as an additional insured in the Other Party's Commercial General Liability insurance policy. However, this separate policy may be the only source of coverage if the Other Party's liability coverage limit is used up by other claims.

## **Builders Risk Coverage**

Builders Risk insurance is to be purchased to cover subject property for all risks of loss (including theft and sinkhole), subject to a waiver of coinsurance, and covering off-site storage, transit and installation risks as indicated in the Installation Floater and Motor Truck Cargo insurance described hereafter, if such coverages are not separately provided.

If flood and/or earthquake risks exist, flood and earthquake insurance are to be purchased.

If there is loss of income, extra expense and/or expediting expense exposure, such coverage is to be purchased.

If boiler and machinery risks are involved, boiler and machinery insurance, including coverage for testing, is to be purchased.

The Builders Risk insurance is to be endorsed to cover the interests of all parties, including the County and all contractors and subcontractors. The insurance is to be endorsed to grant permission to occupy.

## **Installation Floater Coverage**

Installation Floater insurance is to be purchased when Builder's Risk insurance is inappropriate, or when Builder's Risk insurance will not respond, to cover damage or destruction to renovations, repairs or equipment being installed or otherwise being handled or stored by the Other Party, including off-site storage, transit and installation. The amount of coverage should be adequate to provide full replacement value of the property, repairs, additions or equipment being installed, otherwise being handled or stored on or off premises. All risks coverage is preferred.

## **Motor Truck Cargo Coverage**

If the Installation Floater insurance does not provide transportation coverage, separate Motor Truck Cargo or Transportation insurance is to be provided for materials or equipment transported in the Other Party's vehicles from place of receipt to building sites or other storage sites. All risks coverage is preferred.

## **Contractor's Equipment Coverage**

Contractor's Equipment insurance is to be purchased to cover loss of equipment and machinery utilized in the performance of work by the Other Party. All risks coverage is preferred. The contract may declare self-insurance for contractor equipment.

— **Fidelity/Dishonesty Coverage - for Employer (Other Party)**

Fidelity/Dishonesty insurance is to be purchased to cover dishonest acts of the Other Party's employees, including but not limited to theft of vehicles, materials, supplies, equipment, tools, etc., especially property necessary to work performed.

— **Fidelity/Dishonesty/Liability Coverage - for County**

Fidelity/Dishonesty/Liability insurance is to be purchased or extended to cover dishonest acts of the Other Party's employees resulting in loss to the County.

**Garage Liability Coverage**

Garage Liability insurance is to be purchased to cover the Other Party and its employees for its garage and related operations while in the care, custody and control of the County's vehicles.

**Garage Keeps Coverage (Legal Liability Form)**

Garagekeepers Liability insurance is to be purchased to cover damage or other loss, including comprehensive and collision risks, to the County's vehicles while in the care, custody and control of the Other Party. This form of coverage responds on a legal liability basis, and without regard to legal liability on an excess basis over any other collectible insurance.

— **Watercraft Liability Coverage**

Because the Other Party's provision of services involves utilization of watercraft, watercraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any watercraft, including owned, non-owned and hired.

Coverage may be provided in the form of an endorsement to the general liability policy, or in the form of a separate policy coverage Watercraft Liability or Protection and Indemnity.

— **Aircraft Liability Coverage**

Because the Other Party's provision of services involves utilization of aircraft, aircraft liability coverage must be provided to include bodily injury and property damage arising out of ownership, maintenance or use of any aircraft, including owned, nonowned and hired.



The minimum limits of coverage shall be \$-,000,000 per occurrence, Combined Single Limits for Bodily Injury (including passenger liability) and Property Damage.

— **Pollution/Environmental Impairment Liability Coverage**

Pollution/environmental impairment liability insurance is to be purchased to cover pollution and/or environmental impairment which may arise from this agreement or contract.

— **United States Longshoremen and Harborworkers Act Coverage**

The Workers Compensation policy is to be endorsed to include United States Longshoremen and harborworkers Act Coverage for exposures which may arise from this agreement or contract.

— **Jones Act Coverage**

The Workers Compensation policy is to be endorsed to include Jones Act Coverage for exposures which may arise from this agreement or contract.

## **PROFESSIONAL LIABILITY, MALPRACTICE AND/OR ERRORS OR OMISSIONS**

If checked below, the County requires the following terms and types of insurance for professional, malpractice, and errors or omissions liability.

### **-- Hold Harmless**

The following replaces the previous Hold Harmless wording.

The County shall be held harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting therefrom arising out of performance of the agreement or contract, unless such claims are a result of the County's own negligence.

The County Shall also be held harmless against all claims for financial loss with respect to the provision of or failure to provide professional or other services resulting in professional, malpractice, or errors or omissions liability arising out of performance of the agreement or contract, unless such claims are a result of the County's own negligence.

### **-- Professional Liability/Errors or Omissions Coverage**

The Other Party shall purchase and maintain professional liability or malpractice or errors or omissions insurance with minimum limits of \$- ,000,000 per occurrence.

If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts.

Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of as great duration as available, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.